

AMENDED IN ASSEMBLY JULY 8, 1999
AMENDED IN ASSEMBLY JUNE 22, 1999
AMENDED IN SENATE MAY 3, 1999

SENATE BILL

No. 579

Introduced by Senator Dunn

February 23, 1999

An act to amend Sections 22203, 22251, 22305, 22330, 22467, and 22551 of the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 579, as amended, Dunn. Finance lenders.

The California Finance Lenders Law provides for licensing and regulation by the Commissioner of Corporations of persons engaged in the business of making consumer or commercial loans. Under these provisions, a licensed lender generally may not take a deed of trust, mortgage, or lien upon real property as security for a consumer loan if the principal amount of the loan is less than \$5,000.

This bill would provide that a licensed lender may not take a deed of trust, mortgage, or lien upon real property as security for a consumer loan except if the loan is for a bona fide principal amount of \$5,000 or more. This bill would define "bona fide principal amount" for the purpose of determining whether a consumer or commercial loan amount exceeds a regulatory ceiling, as specified.

This bill would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22203 of the Financial Code is
2 amended to read:

3 22203. “Consumer loan” means a loan, whether
4 secured by either real or personal property, or both, or
5 unsecured, the proceeds of which are intended by the
6 borrower for use primarily for personal, family, or
7 household purposes. For purposes of determining
8 whether a loan is a consumer loan, the lender may rely on
9 any written statement of intended purposes signed by the
10 borrower. The statement may be a separate statement
11 signed by the borrower, or may be contained in a loan
12 application or other document signed by the borrower.
13 The lender shall not be required to ascertain that the
14 proceeds of the loan are used in accordance with the
15 statement of intended purposes. Nothing in this section
16 shall authorize the taking of real property as security,
17 except as specified in Section 22330.

18 SEC. 2. Section 22251 of the Financial Code is
19 amended to read:

20 22251. Any section that refers to this section does not
21 apply to any loan of the bona fide principal amount
22 specified in the regulatory ceiling provision of that
23 section or more if that provision is not used for the
24 purpose of evading this division. In determining under
25 Section 22250, 22303, or 22304 or any section that refers to
26 this section whether a loan is a loan of a bona fide principal
27 amount of the amount specified in that section or more
28 and whether the regulatory ceiling provision of that
29 section is used for the purpose of evading this division, the
30 following principles apply:

31 (a) If a borrower applies for a loan in a bona fide
32 principal amount of less than the specified amount and a
33 loan to that borrower of a bona fide principal amount of
34 the specified amount or more if made by a licensed
35 finance lender, no adequate economic reason for the
36 increase in the size of the loan exists, and by
37 prearrangement or understanding between the
38 borrower and the licensee a substantial payment is to be



1 made upon the loan with the effect of reducing the bona
2 fide principal amount of the loan to less than the specified
3 amount within a short time after the making of the loan
4 other than by reason of a requirement that the loan be
5 paid in substantially equal periodical installments, then
6 the loan shall not be deemed to be a loan of the bona fide
7 principal amount of the specified amount or more and the
8 regulatory ceiling provisions shall be deemed to be used
9 for the purpose of evading this division unless the loan
10 complies with the other provisions of the section that
11 includes the regulatory ceiling provisions.

12 (b) If a loan made by a licensed finance lender is in a
13 bona fide principal amount of the specified amount or
14 more, the fact that the transaction is in the form of a sale
15 of accounts, chattel paper, goods, or instruments or a lease
16 of goods, or in the form of an advance on the purchase
17 price of any of the foregoing, shall not be deemed to affect
18 the loan or the bona fides of the amount thereof or to
19 indicate that the regulatory ceiling provisions are used for
20 the purpose of evading this division.

21 (c) For the purposes of determining whether the loan
22 amount exceeds a regulatory ceiling, the “bona fide
23 principal amount” shall not be comprised of any charges
24 or any other fees or recompense specified in Sections
25 22200, 22201; (including, but not limited to, amounts paid
26 for insurance of the types specified in Sections 22313 and
27 22314), 22202, 22305, 22316, 22317, 22318, 22319, 22320,
28 22320.5, and 22336. Nothing in this subdivision shall be
29 construed to prevent those specified charges, fees, and
30 recompense that have been earned and remain unpaid in
31 an existing loan from being considered as part of the bona
32 fide principal amount of a new loan to refinance that
33 existing loan, provided the new loan is not made for the
34 purpose of circumventing a regulatory ceiling provision.
35 This subdivision is intended to ~~clarify~~ *define* the meaning
36 of “bona fide principal amount” as used in this division
37 solely for the purposes of determining whether the loan
38 amount exceeds a regulatory ceiling, and is not intended
39 to affect the meaning of “principal” for any other
40 purpose.



1 SEC. 3. Section 22305 of the Financial Code is
2 amended to read:

3 22305. In addition to the charges authorized by
4 Section 22303 or 22304, a licensee may contract for and
5 receive an administrative fee, which shall be fully earned
6 immediately upon making the loan, with respect to a loan
7 of a bona fide principal amount of not more than two
8 thousand five hundred dollars (\$2,500) at a rate not in
9 excess of 5 percent of the principal amount (exclusive of
10 the administrative fee) or fifty dollars (\$50), whichever
11 is less, and with respect to a loan of a bona fide principal
12 amount in excess of two thousand five hundred dollars
13 (\$2,500), at an amount not to exceed seventy-five dollars
14 (\$75). No administrative fee may be contracted for or
15 received in connection with the refinancing of a loan
16 unless at least one year has elapsed since the receipt of a
17 previous administrative fee paid by the borrower. Only
18 one administrative fee may be contracted for or received
19 until the loan has been repaid in full. For purposes of this
20 section, “bona fide principal amount” shall be
21 determined in accordance with Section 22251.

22 SEC. 4. Section 22330 of the Financial Code is
23 amended to read:

24 22330. No licensee shall take a deed of trust,
25 mortgage, or lien upon real property as security for any
26 loan made under this division, except any lien as is
27 created by law upon the recording of an abstract of
28 judgment. This section shall not apply to any loan of a
29 bona fide principal amount of five thousand dollars
30 (\$5,000) or more as determined in accordance with
31 Section 22251.

32 SEC. 5. Section 22467 of the Financial Code is
33 amended to read:

34 22467. (a) Any section that refers to this section or
35 that is subject to Section 22251 does not apply to any
36 open-end loan of the bona fide principal amount specified
37 in the regulatory ceiling provision of that section or more,
38 or to a duly licensed finance lender in connection with
39 any such loan if that provision is not used for the purpose
40 of evading this division.



1 (b) In determining whether an open-end loan is an
2 open-end loan of a bona fide principal amount specified
3 in any section in this division or more and whether the
4 regulatory ceiling provision of that section is used for the
5 purpose of evading this division, the open-end loan shall
6 be deemed to be for that amount or more if both the
7 following criteria are met:

8 (1) The line of credit is equal to or more than the bona
9 fide principal amount of the specified amount.

10 (2) The initial advance was equal to or more than the
11 bona fide principal amount of the specified amount.

12 (c) A subsequent advance of money of less than the
13 specified amount pursuant to the open-end loan
14 agreement between a borrower and a licensed finance
15 lender shall be deemed to be a loan of a bona fide
16 principal amount of the specified amount if the criteria
17 of paragraphs (1) and (2) of subdivision (b) have been
18 met, even though the actual unpaid balance after the
19 advance or at any other time is less than the bona fide
20 principal amount of the specified amount.

21 (d) Notwithstanding subdivisions (b) and (c), the
22 amount of the line of credit of an unsecured open-end
23 loan shall be the criterion to determine whether an
24 unsecured open-end loan is of a bona fide principal
25 amount or more specified in any section in this division.

26 (e) For the purposes of determining whether the loan
27 amount exceeds a regulatory ceiling, the provisions of
28 subdivision (c) of Section 22251 shall apply to
29 ~~open-ended~~ *open-end* loans.

30 SEC. 6. Section 22551 of the Financial Code is
31 amended to read:

32 22551. In determining whether a loan is a loan of a
33 bona fide principal amount of the specified amount or
34 more, the following principles shall apply:

35 (a) If a borrower applies for a loan in a bona fide
36 principal amount of less than the specified amount and a
37 loan to that borrower of a bona fide principal amount of
38 the specified amount or more is made by a licensed
39 finance lender, no adequate economic reason for the
40 increase in the size of the loan exists, and by



1 prearrangement or understanding between the
2 borrower and the licensee a substantial payment is to be
3 made upon the loan with the effect of reducing the bona
4 fide principal amount of the loan to less than the specified
5 amount within a short time after the making of the loan
6 other than by reason of a requirement that the loan be
7 paid in substantially equal periodical installments, then
8 the loan shall not be deemed to be a loan of the bona fide
9 principal amount of the specified amount or more.

10 (b) A subsequent advance of money of less than a bona
11 fide principal amount of the specified amount pursuant
12 to a revolving or open-end loan agreement or similar
13 agreement between a borrower and a licensed finance
14 lender which gives the borrower the right to draw upon
15 all or any part of the line of credit, or a loan agreement
16 providing for the making of advances to the borrower
17 from time to time up to an aggregate maximum amount
18 which gives the borrower the right to draw all or any part
19 of the total amount, shall be deemed to be a loan of a bona
20 fide principal amount of the specified amount or more if
21 the line of credit or the aggregate maximum amount is a
22 bona fide principal amount of the specified amount or
23 more and the initial advance was a bona fide principal
24 amount of the specified amount or more even though the
25 actual unpaid balance after the advance or at any other
26 time is less than a bona fide principal amount of the
27 specified amount.

28 (c) If a loan made by a licensed finance lender has a
29 bona fide principal amount of the specified amount or
30 more, the fact that the transaction is in the form of a sale
31 of accounts, chattel paper, goods, or instruments, or a
32 lease of goods, or in the form of an advance on the
33 purchase price of any of the foregoing, shall not be
34 deemed to affect the bona fides of the amount thereof.

35 (d) For the purposes of this section, “the specified
36 amount” means five thousand dollars (\$5,000).

37 (e) For the purposes of determining whether the loan
38 amount exceeds a regulatory ceiling, the “bona fide
39 principal amount” shall not be comprised of any charges
40 or any other fees or recompense specified in Sections



1 22500, 22501, and 22601. Nothing in this subdivision shall
2 be construed to prevent those specified charges, fees, and
3 recompense that have been earned and remain unpaid in
4 an existing loan from being considered as part of the bona
5 fide principal amount of a new loan to refinance that
6 existing loan, provided the new loan is not made for the
7 purpose of circumventing a regulatory ceiling provision.
8 This subdivision is intended to define the meaning of
9 “bona fide principal amount” as used in this division
10 solely for the purposes of determining whether the loan
11 amount exceeds a regulatory ceiling, and is not intended
12 to affect the meaning of “principal” for any other
13 purpose.

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